

VII. LIABILITY OF EMPLOYER WHERE HIS OWN ACT WAS A PROXIMATE CAUSE OF THE INJURY.

- 69. Employment of a contractor who is incompetent or otherwise unfit.
- 70. Non-performance by employer of duties not cast by the contract upon the contractor.
- 71. Employer's tortious act co-operating with that of the contractor to produce the injury.
- 72. Failure to remedy a nuisance.
- 73. Control of or interference with the work.
- 74. Employer's ratification or adoption of the contractor's tort.

VIII. LIABILITY OF EMPLOYER AFTER HE HAS ASSUMED CONTROL OF THE SUBJECT-MATTER OF THE WORK EXECUTED BY THE CONTRACTOR.

- 75. Generally.
- 76. Necessity of showing that dangerous conditions were known to the employer.

IV. EMPLOYER LIABLE WHERE THE INJURY WAS THE DIRECT RESULT OF THE WORK CONTRACTED FOR.

43. Generally.—It is well settled that the rule as to the non-liability of an employer for the negligence of independent contractor is "inapplicable to cases in which the act which occasions the injury is one which the contractor was employed to do"(a).

(a) *Pickard v. Smith* (1861) 10 C.B.N.S. 470, 4 L.T.N.S. 470, per Williams, J. This passage was quoted with approval by Vaughan Williams, L.J., in *Penny v. Wimbledon Urban Dist. Council* [1899] 2 Q.B. 72, 77, 68, L.J.Q.B.N.S. 704, '80 L.T.N.S. 615, 47 Week. Rep. 565, 63 J.P. 406.

"I am clearly of opinion that, if the contractor does the thing which he is employed to do, the employer is responsible for that thing as if he did it himself." *Ellis v. Sheffield Gas Consumers' Co.* (1853) 2 El. & Bl. 767, 770, 2 C.L. Rep. 249, 23 L.J.Q.B.N.S. 42, 18 Jur. 146, 2 Week. Rep. 19, per Lord Campbell.

One of the grounds on which a person may be held responsible for an act of negligence which he did not himself commit is that he "authorised" that act. *Hardaker v. Idle Dist. Council* [1896] 1 Q.B. 335, 65 L.J.Q.B.N.S. 363, 74 L.T.N.S. 69, 44 Week. Rep. 323, 60 J.P. 196, per Smith, L.J.

A person who employs a contractor to do a particular act is liable for the injurious acts of the contractor which "flow out of the fulfilment of the contract." *Pitts v. Kingsbridge Highway Board* (1871) 19 Week. Rep. 884, 25 L.T.N.S. 195.

"The distinction appears to me to be that, when work is being done under a contract, if an accident happens, and an injury is caused by negligence in a matter entirely collateral to the contract, the liability rests on the question whether the relation of master and servant exists. When the thing contracted to be done causes the mischief, and the injury can only be said to arise from the authority of the employer, because the thing contracted to be done is imperfectly performed, there the em-